



Federal Communications Commission
Washington, D.C. 20554

April 28, 2011

In Reply Refer to:
1800B3-TSN

Tri-County Radio, Inc.
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Washington, DC 20036-1622

Midwest Communications, Inc.
c/o John S. Neely, Esq.
Miller and Neely, P.C.
6900 Wisconsin Avenue
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Seehafer Broadcasting Corporation
c/o Mark Seehafer, Vice-President
P.O. Box 1385
Manitowoc, WI 54221-1385

Cub Radio, Inc.
c/o Lee Davis, Jr., President and General Manager
Box 1990
Manitowoc, WI 54221-1990

WTRW Inc.
c/o Mark Heller, President
1414 16th Street
Two Rivers, WI 54241-3031

In re: **New(FM), Two Rivers, Wisconsin**
Facility ID No. 85300
File No. BAPH-20110211ADY

**Application for Assignment of
Construction Permit**

Petition to Deny / Informal Objection

Dear Counsel and Parties:

We have before us the above-referenced application (the "Application"), seeking approval for the proposed assignment of the construction permit for a new FM broadcast station at Two Rivers, Wisconsin (the "Two Rivers Permit") from Tri-County Radio, Inc. ("Tri-County") to Midwest Communications, Inc.

("Midwest").¹ Tri-County won the Two Rivers Permit in Closed Broadcast Auction 88 ("Auction 88"), with a gross winning bid of \$49,000.² On March 10, 2011, Cub Radio, Inc. ("Cub"), licensee of stations WCUB(AM), Two Rivers, Wisconsin, and WLTU(FM), Manitowoc, Wisconsin, filed an "Informal Objection to Transfer, Without Technical Conditions; Petition to Reconsider all Technical Exhibits in Original Grant; Petition to Change 'City of License' to Benefit Potential Airport Interference (sic) to Local Airports" ("Objection"). On March 14, 2011, Seehafer Broadcasting Corporation ("Seehafer"), licensee of stations WQTC-FM, Manitowoc, Wisconsin, and WLKN(FM), Cleveland, Wisconsin, filed a "Petition to Deny Transfer Without Imposing Conditions, to Protect Existing FM Stations from Intermodulation Interference" ("Petition").³ For the reasons stated below, we deny the Petition and Objection, and grant the Assignment Application, as conditioned.

Background. As noted above, Tri-County was the winning bidder in Auction 88 for the Two Rivers Permit, entering a gross winning bid of \$49,000 (which, after applying Tri-County's 35 percent bidding credit, represented a net winning bid of \$31,850). Tri-County's FCC Form 301 long-form application for the Two Rivers Permit was accepted for filing on August 6, 2010, and was granted on December 16, 2010. No petitions to deny or informal objections were filed against the long-form application. Tri-County and Midwest filed the instant Application on February 11, 2011.

Neither the Petition nor the Objection makes any specific allegations regarding Tri-County's qualifications to assign the Two Rivers Permit, nor regarding Midwest's qualifications as an assignee or Commission permittee. Rather, both forward arguments regarding the technical facilities of the proposed station at Two Rivers. Seehafer, citing "its own engineering review" based on "a mathematical and scientific evaluation," contends that the proposed station's signal at 98.9 MHz will mix with those of other stations in the area to create intermodulation interference.⁴ Additionally, Seehafer also states it is "very deeply concerned" about the proximity of the proposed tower site of the new Two Rivers station to the transmitter of its station WLKN(FM).⁵ Seehafer seeks "a complete engineering study [to] be undertaken and re-evaluated in regards to the placement of [the Two Rivers station] tower; its contribution to intermodulation interference over a vast residential, commercial, and industrial area of Manitowoc, WI; and its overall value to the marketplace, as the winning bidder at auction paid only slightly more than \$30,000.00 and immediately sold it for an instant profit six-times (sic) its bid," and further demands that the assignment include terms "which would allow filtering of 60 dB or more on each FM radio station in the marketplace, to be paid for by Permittee."⁶

¹ File No. BPH-19970127MB.

² See *Closed Auction of Broadcast Construction Permits Closes; Winning Bidders Announced for Auction 88*, Public Notice, 25 FCC Rcd 10071, 10081 (MB/WTB 2010).

³ Tri-County filed a Consolidated Opposition to Petition to Deny and Informal Objection ("Opposition") on March 22, 2011. WTRW Incorporated ("WTRW") filed "Comments in Support of [Application] Filing" on March 17, 2011.

⁴ Petition at 1-2.

⁵ *Id.* at 3.

⁶ *Id.*

In its Objection, Cub cites its own concerns regarding intermodulation interference, not only to radio listeners but also to the Instrument Landing System on the final approach to Runway 17 at Manitowoc County Airport.⁷ Like Seehafer, Cub requests “further engineering research and proper design, to minimize this interference,” as well as filtering of 100 dB.⁸ Alternatively, Cub suggests that the new Two Rivers station be moved to the south, possibly changing its community of license to another community farther from Two Rivers and the Manitowoc County Airport.⁹

Discussion. *Petition and Objection.* We agree with Tri-County that the Petition and Objection present allegations that are more properly addressed when considering an application for an initial construction permit than in response to an assignment application. We note that, to the extent the Petition and Objection seek reconsideration on technical grounds of our grant of the Two Rivers Permit, they are untimely and may not be considered.¹⁰ The staff studied Tri-County’s long-form application, as amended, and was satisfied that it complied with all Commission technical, spacing, and community coverage rules. Moreover, Tri-County attaches to its Opposition a copy of the Federal Aviation Administration’s (“FAA”) Determination of No Hazard to Air Navigation, which according to the FAA is based in part on Tri-County’s description of the proposed tower and antenna, “which includes specific coordinates, heights, frequency(ies) and power.”¹¹

Neither Seehafer nor Cub, on the other hand, provides any sort of specific engineering study to back up its claims of intermodulation interference. Seehafer merely references “its own engineering review,” without providing details of how that review was conducted, other than by referencing a mathematical formula that may or may not accurately predict intermodulation interference, depending on variables such as power levels and proximity of transmitting antennas that are not detailed.¹² Likewise, Cub does not provide any sort of engineering evidence, referencing only its “fears” regarding intermodulation interference,¹³ and stating that it has “been advised by the engineering community” that intermodulation effects have been noted at approximately 110.6 MHz.¹⁴ Such statements are not only insufficiently specific as to the source of the information, but are unreliable given that any such interference observations almost certainly antedate construction of facilities under the Two Rivers Permit. In any event, we are aware of no precedent for the relief Seehafer and Cub seek, namely, conditioning an assignment application on prospective interference remediation. Rather, the Two Rivers facilities, when

⁷ Objection at 2-3.

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

¹⁰ A petition for reconsideration may not be considered more than 30 days after public notice is given of the action to be reconsidered. See 47 U.S.C. § 405(a), 47 C.F.R. § 1.106(f). Public notice of grant of the Two Rivers Permit was given on December 21, 2010. *Broadcast Actions*, Public Notice, Report No. 47387 (MB Dec. 21, 2010). Thus, any petition for reconsideration was to have been filed no later than January 20, 2011.

¹¹ See Attachment to Opposition, at 2.

¹² Petition at 1-2.

¹³ Objection at 2.

¹⁴ *Id.* at 3.

constructed, will be required to comply at all times with Section 73.317 of the Rules regarding harmful interference.¹⁵ Finally, while Cub's Objection is partially couched as a petition to change the Two Rivers Permit's community of license, we note that our Rules provide for no such petition, except insofar as the permittee itself may seek such a change.¹⁶

In short, Seehafer's and Cub's requests to impose conditions on the operation of the station constructed under the Two Rivers Permit are procedurally tardy and substantively without merit. Accordingly, the Petition and Objection are denied.

Unjust Enrichment. As noted above, Tri-County employed a 35 percent new entrant bidding credit when it made its final auction payment for the Two Rivers Permit, reducing its gross winning bid by \$17,150. Midwest, the licensee of over 40 radio stations, would not be entitled to claim any bidding credit in a broadcast auction. Accordingly, pursuant to Section 73.5007(c) of the Rules,¹⁷ the permittee must reimburse the U.S. Government for the amount of the bidding credit, plus interest, according to the schedule set forth in that rule section.¹⁸ The amount of the reimbursement has been calculated and set forth in a separate letter. Grant of the Application is expressly conditioned upon full payment of any required unjust enrichment payments on or before the consummation date, pursuant to Sections 1.2111 and 73.5007(c) of the Commission's Rules.¹⁹

Conclusion/Actions. Based on the foregoing, we find that neither Seehafer nor Cub has raised a substantial and material question of fact warranting further inquiry. We further find that Midwest is qualified to hold the Two Rivers, Wisconsin, construction permit, and that grant of the Application is consistent with the public interest, convenience and necessity.

Accordingly, IT IS ORDERED, that Cub Radio, Inc.'s March 10, 2011, Objection IS DENIED, and that Seehafer Broadcasting Corporation's March 14, 2011, Petition IS DENIED.

IT IS FURTHER ORDERED that, pursuant to the authority granted in Sections 4(i), 309(j), and 310(d) of the Communications Act of 1934, as amended,²⁰ the application for approval to assign the construction permit for a new FM broadcast station at Two Rivers, Wisconsin, File No. BAPH-20110211ADY, from Tri-County Radio, Inc. to Midwest Communications, Inc. IS GRANTED, with the following condition:

¹⁵ 47 C.F.R. § 73.317. *See, e.g., id.* § 73.317(a) ("[S]hould harmful interference to other authorized stations occur, the licensee shall correct the problem promptly or cease operation.").

¹⁶ *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14217-23 (2006), *recon. pending*.

¹⁷ 47 C.F.R. § 73.5007(c).

¹⁸ *Id.*

¹⁹ *Id.* §§ 1.2111, 73.5007(c).

²⁰ 47 U.S.C. §§ 154(i), 309(j), 310(d).

The grant of this assignment of license is conditioned upon the full payment of the requisite unjust enrichment payment on or before the consummation date. Consummation will not be valid unless the Commission first receives the unjust enrichment payment in full.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by two hash marks (# #).

Peter H. Doyle
Chief, Audio Division
Media Bureau